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In re Application of SIMON et al
U.S. Application No.: 10/583,479
PCT Application No.: PCT/EP2004/013280
Int. Filing Date: 23 November 2004
Priority Date Claimed: 10 December 2003
Attorney Docket No.: 12604/25
For: SYSTEM

DECISION

This is in response to applicant's "Response to Notification of Missing Requirements Under 35 U.S.C. 371" filed 17 May 2007, which is being treated as a petition under 37 CFR 1.181. No petition fee is due.

BACKGROUND

On 23 November 2004, applicant filed international application PCT/EP2004/013280, which claimed priority of an earlier Germany application filed 10 December 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 14 July 2005. The thirty-month period for paying the basic national fee in the United States expired on 19 June 2006.

On 19 June 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and a copy of an execute declaration submitted in the international application under PCT Rule 4.17(iv).

On 26 February 2007, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that the declaration filed 19 June 2006 does not identify the application to which it is directed.

DISCUSSION

A review of the application file reveals that the declaration filed 19 June 2006 is present. A declaration under PCT Rule 4.17(iv) need not identify the international application number if

the declaration is filed with the international application papers on the international filing date. A review of the declaration indicates that joint inventor Josef Schmidt appears to have executed the declaration on 27 November 2004, which is later than the international filing date. Assuming this is correct, a complete declaration could not have been filed on the international filing date. Therefore, for the purposes of the national stage in the United States, the declaration under PCT Rule 4.17(iv) does not properly identify the application to which it is directed, and the mailing of the Notification of Missing Requirements on 26 February 2007 was proper.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

Because the filing of the present petition is deemed to be a bona fide attempt to respond to the Notification of Missing Requirements, applicant is hereby given a time limit of ONE (1) MONTH to file a proper reply. Extensions of time are NOT available. Failure to time file a proper reply will result in ABANDONMENT of the application. A proper reply would include one of the following: (1) a properly executed oath/declaration, (2) adequate proof that the declaration under PCT Rule 4.17(iv) was filed on the international filing date along with an explanation as to the date of execution by joint inventor Schmidt, or (3) an appropriate petition under 37 CFR 1.47 in the event one or more of the joint inventors is not available to sign.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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